Oxfordshire Safeguarding Children Board

GUIDANCE FOR PROFESSIONALS WORKING WITH SEXUALLY ACTIVE YOUNG PEOPLE UNDER THE AGE OF 18 IN OXFORDSHIRE

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Introduction.

This protocol has been devised with the understanding that most young people under the age of 18 will have an interest in sex and sexual relationships.

It is supported by:

Appendix 1 – Flowchart for professionals working with sexually active under 18's

It is designed to assist those working with children and young people to identify where these relationships may be abusive, and the children and young people may need the provision of protection or additional services.

It is based on the core principle that the welfare of the child or young person is paramount, and emphasises the need for professionals to work together in accurately assessing the risk of significant harm when a child or young person is engaged in sexual activity.

All agencies, which have contact with children and young people, should use this protocol to develop and implement local guidance for their own staff.

It should be used in conjunction with Oxfordshire Safeguarding Children Board Child Protection procedures and Information Sharing Protocol.

1. Assessment

1.1 All young people, regardless of gender, or sexual orientation who are believed to be engaged in, or planning to be engaged in, sexual activity must have their needs for health education, support and/or protection assessed by the agency involved.

1.2 In assessing the nature of any particular behaviour, it is essential to look at the facts of the actual relationship between those involved. Power imbalances are very important and can occur through differences in size, age and development and where gender, sexuality, race and levels of sexual knowledge are used to exert such power.

1.3 If the young person has a learning disability, mental disorder or other communication difficulty, they may not be able to communicate easily to someone that they are, or have been abused, or subjected to abusive behaviour. Staff need to be aware that the Sexual Offences Act recognises the rights of people with a mental disorder to a full life, including a sexual life. However, there is a duty to protect them from abuse and exploitation. The Act includes 3 new categories of offences to provide additional protection (See Appendix 2)

1.4 In order to determine whether the relationship presents a risk to the young person, the following factors should be considered. This list is not exhaustive and other factors may be needed to be taken into account -

- Whether the young person is competent to understand and consent to the sexual activity they are involved in
- The nature of the relationship between those involved, particularly if there are age or power imbalances as outlined above

- Whether overt aggression, coercion or bribery was involved including misuse of substances/alcohol as a disinhibitor

- Whether the young person's own behaviour, for example through misuse of substances, including alcohol, places them in a position where they are unable to make an informed choice about the activity

- Any attempts to secure secrecy by the sexual partner beyond what would be considered usual in a teenage relationship

- Whether the sexual partner is known by the agency as having other concerning relationships with similar young people

- If accompanied by an adult, does that relationship give any cause for concern?

- Whether the young person denies, minimises or accepts concerns

- Whether methods used to secure compliance and/or secrecy by the sexual partner are consistent with behaviours considered to be 'grooming' (Appendix 2)

- Whether sex has been used to gain favours (e.g. swap sex for cigarettes, clothes, cds, trainers, alcohol, drugs etc.)

- The young person has a lot of money or other valuable things, which cannot be accounted for.

It is considered good practice for workers to follow the Fraser guidelines when discussing personal or sexual matters with a young person under 16. The Fraser guidelines give guidance on providing advice and treatment to young people under 16 years of age. **See Appendix 3**

2. Process

2.1

In working with young people, it must always be made clear to them that absolute confidentiality cannot be guaranteed, and that there will be some circumstances where the needs of the young person can only be safeguarded by sharing information with others.

This discussion with the young person may prove useful as a means of emphasising the gravity of some situations. Any referral or potential referral should be discussed in the first instance with the young person unless there are concerns about this affecting the safety of the young person.

2.2

The decision making process must consider the relationship between the professional and the young person, and seek to build trust as far as possible. The amount of information that will be forthcoming will vary from one setting to another, and will be affected by whether the professional has any prior knowledge of the young person.

2.3

In some cases urgent action may need to be taken to safeguard the welfare of a young person. However, in most circumstances there will need to be a process of information sharing and discussion in order to formulate an appropriate plan. There should be time for reasoned consideration to define the best way forward. Anyone concerned about the sexual activity of a young person should initially discuss this with the person in their agency responsible for child protection. There may then be a need for further consultation with the Children's Assessment Team; all discussions should be recorded, giving reasons for action taken and who was spoken to.

2.4

It is important that all decision-making is undertaken with full professional consultation. It must not be made by one person alone (agency procedures must include guidance on how this is to be undertaken within their own organisation)

During this process agencies must continue to offer the service and support to the young person.

2.5

When a referral is received by the Children's Assessment team, an enquiry to the Child Protection Register will be made, followed by a strategy discussion with partner agencies include the Police. This discussion should be informed by the assessment undertaken using this protocol and in the majority of cases may be largely for the purposes of consultation and information sharing.

In many cases, it will not be in the best interests of the young person for criminal or civil proceedings to be instigated. However, Police and other agencies may hold vital information that will assist in any clear assessment of risk.

2.6

If there concerns that the young person may be at risk of sexual exploitation through prostitution, a referral should be made to Children's Assessment Team. If the situation is an emergency, the local police should be contacted immediately.

3. Young People Under the Age of 13

Under the Sexual Offences Act 2003, children under the age of 13 are considered of insufficient age to give consent to sexual activity. Any offence under the Sexual Offences Act 2003 involving a child under the age of 13 is very serious and should be taken to indicate a risk of significant harm to the child. Penetrative sex with a child under the age of 13 is classed as rape.

3.1

All cases where the sexually active young person is under the age of 13 should always be discussed with a nominated child protection lead in the organisation. Each case must be assessed individually. There should be a presumption that a referral, using the Oxfordshire Childrens Social Care Referral Form, is made to the Children's and Families Assessment Team in order that a full assessment can be made. For this to be meaningful, the young person will need to be identified, as will their sexual partner if details are known.

The referrer should also encourage the young person to share information about the referral with their parents and carers wherever safe to do so.

If this is not safe there should be a discussion with the young person, in order to identify an adult to be made aware of the referral and who is able to offer ongoing support.

3.2

A decision not to refer can only be made following a case discussion with the designated lead for child protection within the professional's employing authority. When a referral is not made, the professional and agency concerned is fully accountable for the decision and a good standard of record keeping must be made, including the reasons for not making a referral.

3.3

When the Children's Assessment team has a case referred to them, a strategy discussion should be held, this should involve Children's Assessment team, police, health and relevant agencies to discuss appropriate next steps.

The police must be notified as soon as possible when a criminal offence has been committed against a child unless there are exceptional reasons not to do so.

Not all notifications to the police result in criminal investigation and prosecution. The police, children's social care and other agencies should exercise discretion in the interests of the child. The criteria below should also support any decisions taken after the police have been notified. (REF Bichard Inquiry)

The decision should take account of:

• age or power imbalances;

• overt aggression;

• coercion or bribery;

• the misuse of substances as a disinhibitor;

• whether the child's own behaviour, because of the misuse of substances, places him/her at risk so that he/she is unable to make an informed choice about any activity;

• whether any attempts to secure secrecy have been made by the sexual partner, beyond what would be considered usual in a teenage relationship;

• whether the sexual partner is known by one of the agencies (which presupposes that checks will be made with the police);

• whether the child denies, minimises or accepts concerns;

• whether the methods used are consistent with grooming.

3.4

When a girl under 13 is found to be pregnant, a referral to the Children's Assessment Team must be made and they will hold a strategy discussion with the police and/or other agencies. At this stage a multi agency support package should be formulated.

4. Young People between 13 and 16

4.1 The Sexual Offences Act 2003 reinforces that, whilst mutually agreed, non-exploitative sexual activity between teenagers does take place and that often no harm comes from it, the age of consent should still remain at 16. This acknowledges that this group of young people is still vulnerable, even when they do not view themselves as such.

4.2 Sexually active young people in this age group will still have to have their needs assessed using this protocol. Discussion with the Children's Assessment team will depend on the level of risk/need assessed by those working with the young person.

4.3 This difference in procedure reflects the position that, whilst sexual activity under 16 remains illegal, young people under the age of 13 are not capable to give consent to such sexual activity.

5. Young People between 17 – 18

Young people under the age of 18 are still offered the protection of Child Protection Procedures under the Children Act 1989.

Consideration still needs to be given to issues of sexual exploitation through prostitution and abuse of power in circumstances outlined above. Young people, of course, can still be subject to offences of rape and assault and the circumstances of an incident may need to be explored with a young person.

Young people over the age of 16 and under the age of 18 are not deemed able to give consent if the sexual activity is with an adult in a position of trust or a family member as defined by the Sexual Offences Act 2003.

The Act raises the age of those protected from familial child sexual abuse from 16 to 18. It is recognised that the modern family unit is often complex and have therefore defined family relationships to take into account situations where someone is living within the same household as a child and assuming a trust or authority over that child, as well as relationships defined by blood ties, adoption, fostering, marriage or 'common law' partnerships.

6. Sharing Information with Parents and Carers

6.1 Decisions to share information with parents and carers will be taken using professional judgement, consideration of Fraser guidelines and in consultation with the Child Protection Procedures. Decisions will be based on the child's age, maturity and ability to appreciate what is involved in terms of the implications and risks to themselves. This should be coupled with the parents' and carers' ability and commitment to protect the young person. Given the responsibility that parents have for the conduct and welfare of their children, professionals should encourage the young person, at all points, to share information with their parents and carers wherever safe to do so.

6.2 This protocol is written on the understanding that those working with this vulnerable group of young people will naturally want to do as much as they can to provide a safe, accessible and confidential service whilst remaining aware of their duty of care to safeguard them and promote their well being.

APPENDIX 1

Flow Chart for Professionals Working With Sexually Active Under 18's

INITIAL ASSESSMENT OF RISK *(based on information available)*

Consider:

- The young person, (inc. whether they appear to be under 13 because the law treats under 13s differently)
- The context of the consultation (inc. who else is present)
- Any information known or forthcoming about their partner
- Give advice, support/treatment in line with Fraser competency
- Young person should be kept advised of actions being taken where this is appropriate to do so.

Act in a timely way, avoiding and minimising delay, ensuring that at all stages you minimise risk of harm for both the young person and their sexual partner if she/he is at risk of harm

Following assessment

No concerns

Immediate/imminent concern
(To young person or risk of young person abusing someone else)

Some concerns / uncertainty

Is he/she under 13?

- Seek immediate advice from Childrens assessment team and or child protection investigation unit.
- Seek support from agency child protection lead / Manager,

- Obtain more information on specific concern & reassess

Yes

No

Further Guidance Needed
Discuss with Child Protection lead, Named/Designated Clinician, or Line Manager
Reassessment of case

Plan agreed re next steps Document decision-making.

Child protection procedures initiated. Document outcome and decisions made

Referral to Childrens Assessment team

Offer advice, support / treatment; document discussion and actions

APPENDIX 2
Guidance and legislation

Sexual Offences Act 2003.
Bichard Enquiry 2005
Working Together 2006

- **Enabling young people to access contraceptive and Sexual health information and advice: Legal and Policy Framework for Social Workers, Residential Social Workers, Foster Carers and other Social Care Practitioners.**
  (Department for Education and Skills Teenage Pregnancy Unit 2004).

- **What to do if you are worried a child is being abused Children's Services Guidance.**
  (Joint publication from the Department of Health, Home Office, Office of the Deputy Prime Minister, Lord Chancellor, Department of Education and Skills).

- **Cross Government guidance, Information Sharing: practitioners guide. www.ecm.gov.uk**

- **Handling Allegations of sexual offences against children.**
  (Local Authority Social Services Letter LASSL (2004) 21 August 2004).

- **Guidance on offences against children**.
  (Home Office Circular 16/2005)

APPENDIX 3

Good practice in providing contraception and sexual health to young people under 16

It is considered good practice for doctors and other health professionals to consider the following issues when providing advice or treatment to young people under 16 on contraception, sexual and reproductive health.

If a request for contraception is made, doctors and other health professionals should establish rapport and give a young person support and time to make an informed choice by discussing:

- The emotional and physical implications of sexual activity, including the risks of pregnancy and sexually transmitted infections.
- Whether the relationship is mutually agreed and whether there may be coercion or abuse.
- The benefits of informing their GP and the case for discussion with a parent or carer. Any refusal should be respected. In the case of abortion, where the young woman is competent to consent but cannot be persuaded to involve a parent, every effort should be made to help them find another adult to provide support, for example another family member or specialist youth worker.

- Any additional counselling or support needs.

Additionally, it is considered good practice for doctors and other health professionals to follow the criteria outlined by Lord Fraser in 1985, in the House of Lords' ruling in the case of Victoria Gillick v West Norfolk and Wisbech Health Authority and Department of Health and Social Security. These are commonly known as the Fraser Guidelines:

- the young person understands the health professional's advice;
- the health professional cannot persuade the young person to inform his or her parents or allow the doctor to inform the parents that he or she is seeking contraceptive advice;
- the young person is very likely to begin or continue having intercourse with or without contraceptive treatment;
- unless he or she receives contraceptive advice or treatment, the young person's physical or mental health or both are likely to suffer;
- the young person's best interests require the health professional to give contraceptive advice, treatment or both without parental consent.